

AMENDED IN SENATE MAY 22, 2003

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 22, 2003

## SENATE BILL

No. 734

### Introduced by Senator Ortiz

February 21, 2003

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An act to amend Sections 3027.5 and 3040 of, *and* to add Section 3100.5 to, ~~and to repeal Section 3027.1 of,~~ the Family Code, relating to child custody.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 734, as amended, Ortiz. Child custody and visitation.

(1) ~~Existing law authorizes a court to impose reasonable money sanctions, and reasonable attorney's fees incurred in recovering the sanctions, against a person who makes a knowingly false accusation of child abuse or neglect during a child custody proceeding, under certain conditions.~~

~~This bill would delete that provision.~~

(2) Existing law provides that a parent may not be placed on supervised visitation, or be denied custody of, or visitation with, his or her child, and his or her custody or visitation rights may not be limited, solely because the parent (a) lawfully reported suspected sexual abuse of the child, (b) otherwise acted lawfully, based on a reasonable belief, to determine if his or her child was the victim of sexual abuse, or (c) sought treatment for the child from a licensed mental health professional for suspected sexual abuse.

This bill would expand this provision to prohibit a parent's custody or visitation rights from being limited in part because the parent performed those acts. The bill would also provide that this provision would apply retroactively under certain conditions. The bill would provide that a finding by a court that a parent was placed on supervised visitation, denied custody or visitation, or had his or her custody or visitation rights limited because the parent performed those acts constitutes a change of circumstances for purposes of modifying a custody or visitation order. The bill would also make technical changes to this provision.

(3)

(2) Existing law requires a court to consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent in making an order granting custody to either parent, as specified.

This bill would revise that provision to require a court to consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with a noncustodial parent who has not committed child abuse or neglect, as defined, in making that order.

(4)

(3) Existing law requires a court to consider, when there is a protective order that has been directed to a parent, whether the best interest of the child requires that any visitation by a parent be supervised, suspended, or denied.

This bill would require a court to impose supervised visitation, notwithstanding a stipulation to the contrary by the parties or recommendations by the mediator, when the court has granted visitation to a parent, and has been made aware of evidence of risk to the child indicating that it is necessary to protect the child from risk of harm due to physical or sexual abuse, neglect, substance abuse by a parent or a member of the parent's household, or domestic violence perpetrated by that parent or the risk of abduction by the parent. The bill would prohibit a court from granting unsupervised visitation to a parent who has been convicted on 2 or more occasions of a serious felony, as defined, domestic violence, child abuse or neglect, or felony possession or use of a controlled substance within the previous 5 years, except as specified. The bill would also require the court to consider specified factors prior to imposing supervised visitation on a parent who is deemed a flight risk, as specified. The bill would also require a court to find by a preponderance of the evidence that a biological or adoptive



parent, to whom the child is attached and who plays an important developmental role in the child's life, poses a risk to the child, as specified, before denying visitation or imposing supervised visitation on that parent. The bill would require the court to consider the economic resources of the parent and the community, if imposing supervised visitation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. — Section 3027.1 of the Family Code is repealed.~~  
2     ~~SEC. 2.~~  
3     SECTION 1. Section 3027.5 of the Family Code is amended  
4 to read:  
5     3027.5. (a) A court may not place a parent on supervised  
6 visitation, nor deny a parent custody of or visitation with his or her  
7 child, and the custody or visitation rights of a parent may not be  
8 limited, solely, or in part, because the parent did any of the  
9 following:  
10     (1) Lawfully reported suspected sexual abuse of the child.  
11     (2) Otherwise acted lawfully, based on a reasonable belief, to  
12 determine if his or her child was the victim of sexual abuse.  
13     (3) Sought treatment for the child from a licensed mental health  
14 professional for suspected sexual abuse.  
15     (b) Subdivision (a) shall apply retroactively when a parent  
16 establishes that his or her custody or visitation rights were limited  
17 solely or in part because that parent performed any act described  
18 in paragraph (1), (2), or (3) of subdivision (a).  
19     (c) A finding by a court that a parent was placed on supervised  
20 visitation, denied custody or visitation, or had his or her custody  
21 or visitation rights limited because the parent performed any act  
22 described in paragraph (1), (2), or (3) of subdivision (a) constitutes  
23 a change of circumstances for purposes of modifying a custody or  
24 visitation order.  
25     (d) The court may order supervised visitation or limit a parent's  
26 custody or visitation if the court finds substantial evidence that the  
27 parent, with the intent to interfere with the other parent's lawful  
28 contact with the child, made a report of child sexual abuse, during  
29 a child custody proceeding or at any other time, that he or she knew

1 was false at the time it was made. Any limitation of custody or  
2 visitation, including an order for supervised visitation, pursuant to  
3 this subdivision, or any statute regarding the making of a false  
4 child abuse report, shall be imposed only after the court has  
5 determined that the limitation is necessary to protect the health,  
6 safety, and welfare of the child, and the court has considered the  
7 state's policy of assuring that children have frequent and  
8 continuing contact with both parents as declared in subdivision (b)  
9 of Section 3020.

10 ~~SEC. 3.~~

11 *SEC. 2.* Section 3040 of the Family Code is amended to read:

12 3040. (a) Custody should be granted in the following order of  
13 preference according to the best interest of the child as provided  
14 in Sections 3011 and 3020:

15 (1) To both parents jointly pursuant to Chapter 4 (commencing  
16 with Section 3080) or to either parent. In making an order granting  
17 custody to either parent, the court shall consider, among other  
18 factors, which parent is more likely to allow the child frequent and  
19 continuing contact with a noncustodial parent who has not  
20 committed child abuse or neglect as described in Section 11165.6  
21 of the Penal Code or "domestic violence" as defined in Section  
22 13700 of the Penal Code, consistent with Section 3011 and 3020,  
23 and shall not prefer a parent as custodian because of that parent's  
24 sex. The court, in its discretion, may require the parents to submit  
25 to the court a plan for the implementation of the custody order.

26 (2) If to neither parent, to the person or persons in whose home  
27 the child has been living in a wholesome and stable environment.

28 (3) To any other person or persons deemed by the court to be  
29 suitable and able to provide adequate and proper care and guidance  
30 for the child.

31 (b) This section establishes neither a preference nor a  
32 presumption for or against joint legal custody, joint physical  
33 custody, or sole custody, but allows the court and the family the  
34 widest discretion to choose a parenting plan that is in the best  
35 interest of the child.

36 ~~SEC. 4.~~

37 *SEC. 3.* Section 3100.5 is added to the Family Code, to read:

38 3100.5. (a) Children who are placed in the unsupervised  
39 custody of, or who are permitted to have unsupervised visitation  
40 with, a perpetrator of child abuse or domestic violence are at risk

1 for many reasons, including the following: direct child abuse by  
2 the perpetrator; exposure to acts of domestic violence; being used  
3 by the perpetrator as weapons for post separation reprisal against  
4 an ex-spouse; or being taught to become perpetrators or victims of  
5 domestic violence themselves. It is the intent of the Legislature  
6 that the courts protect children from harm that is the result of child  
7 abuse or domestic violence by imposing supervised visitation on  
8 a parent when a parent has two or more convictions for any of the  
9 following crimes: a serious felony, as defined in Section 1192.7 of  
10 the Penal Code, domestic violence, child abuse or neglect, or the  
11 felonious possession or use of a controlled substance within the  
12 previous five years.

13 (b) Notwithstanding a stipulation to the contrary by the parties  
14 or recommendations by the mediator, the court shall impose  
15 supervised visitation when the court has granted visitation to a  
16 parent and the court has been made aware of evidence of risk to the  
17 child indicating that supervised visitation is necessary to protect  
18 the child from risk of harm due to physical or sexual abuse,  
19 neglect, substance abuse by a parent or member of the parent's  
20 household, or domestic violence perpetrated by that parent or the  
21 risk of abduction by the parent.

22 (c) (1) Except as provided in paragraph (2), a court may not  
23 grant unsupervised visitation to a parent who has been convicted  
24 on two or more occasions of any of the following:

25 (A) A serious felony, as defined in Section 1192.7 of the Penal  
26 Code.

27 (B) Domestic violence.

28 (C) Child abuse or neglect.

29 (D) A felony offense for the possession or use of a controlled  
30 substance within the previous five years.

31 (2) A court may grant unsupervised visitation to a parent  
32 described in paragraph (1) only if the court has made a  
33 determination regarding each of the following:

34 (A) If the parent is restrained by a protective order granted after  
35 a hearing, that he or she has complied with its terms and conditions.

36 (B) That the parent has successfully completed a batterer's  
37 treatment program that meets the criteria outlined in subdivision  
38 (c) of Section 1203.097 of the Penal Code, if the parent has been  
39 convicted of domestic violence or the court has ordered the parent  
40 to attend a batterer's treatment program.

1 (C) That the parent has not committed any further acts of  
2 domestic violence, child abuse, or substance abuse.

3 (D) If the parent is on probation or parole, that he or she has  
4 complied with its terms and conditions.

5 (E) That the parent has successfully completed and continues  
6 to meet the standards of any court-ordered program of alcohol or  
7 drug abuse counseling.

8 (d) (1) Prior to limiting visitation to a parent who may be  
9 considered a flight risk, the court shall consider whether the parent  
10 comes within the description of Section 278.7 of the Penal Code,  
11 and, if so, shall attempt to address the situation through measures  
12 other than limitations on visitation, consistent with the provisions  
13 of Section 3048.

14 (2) A court may not deem a parent to be a flight risk solely on  
15 the opinion or recommendation of a mental health professional. A  
16 court may deem a parent to be a flight risk only if there is additional  
17 evidence that the parent intends to abduct the child, and that  
18 evidence is independent of the mental health professional's  
19 opinion or recommendation.

20 (e) (1) Before denying visitation or imposing supervised  
21 visitation on a biological or adoptive parent to whom the child is  
22 attached and who plays an important developmental role in the  
23 child's life, the court shall find by a preponderance of the evidence  
24 that the parent poses a risk to the child due to one or more of the  
25 following:

26 (A) Child abuse or neglect as described in Section 11165.6 of  
27 the Penal Code.

28 (B) Domestic violence, as defined in Section 13700 of the  
29 Penal Code, perpetrated by the parent.

30 (C) Risk of abduction by the parent.

31 (D) Substance abuse.

32 (2) The court may not conclude that a parent is not the primary  
33 caretaker if the parent is absent or relocates for the reasons  
34 described in Section 3046.

35 (f) The court's decision to deny visitation, impose supervised  
36 visitation, or modify an order denying visitation or imposing  
37 supervised visitation, may be based on any admissible evidence  
38 including, but not limited to, evidence produced by an  
39 investigation, evaluation, or mediation. The court's decision may  
40 not be based solely on the recommendation of, or a conclusion

1 reached by, a mediator, evaluator, or investigator, but shall be  
2 based on independent consideration of any evidence presented by  
3 the parties.

4 (g) If the court has evidence that is the basis for a reasonable  
5 suspicion that a parent is putting a child at risk of harm due to child  
6 abuse, domestic violence, or substance abuse, or the threat or risk  
7 of abduction by the parent, the court shall make an interim order  
8 denying visitation or imposing supervised visitation to protect the  
9 child until the court has determined the measures necessary to  
10 protect the child on a permanent basis.

11 (h) Any evaluation, investigation, or assessment conducted to  
12 determine the need for an order denying visitation rights, imposing  
13 court ordered supervised visitation, or modifying an order denying  
14 visitation or imposing supervised visitation shall be conducted by  
15 an evaluator or investigator who meets the qualifications set forth  
16 in Section 3110.5.

17 (i) Except as otherwise provided in subdivision (g), this section  
18 does not apply to any emergency court-ordered partial  
19 investigation that is conducted for the purpose of assisting the  
20 court in determining any immediate temporary orders that may be  
21 necessary to protect and meet the immediate needs of a child. This  
22 section does apply when the emergency is resolved and the court  
23 is considering permanent child custody and visitation orders.

24 (j) If the court imposes supervised visitation, the court shall  
25 consider the economic resources of the parent and existing  
26 community resources to ensure that parents and children are not  
27 denied visitation due to economic hardship.

